

# HOUSE . . . . . No. 1665

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By Mr. Murphy of Burlington, petition of Charles A. Murphy for legislation to promote reliable high quality utility service. Telecommunications, Utilities and Energy.

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## The Commonwealth of Massachusetts

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In the Year Two Thousand and Five.

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AN ACT TO PROMOTE RELIABLE AND HIGH QUALITY UTILITY SERVICE IN THE COMMONWEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 SECTION 1. Section 40A of chapter 82 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended by  
3 inserting at the end thereof the following:—

4 The designation markings required by this section shall be per-  
5 formed by trained permanent employees of the utility unless oth-  
6 erwise authorized by a collective bargaining agreement. If no such  
7 trained permanent employees are available, the department of  
8 telecommunications and energy may certify and license outside  
9 companies to perform such designation markings. Moreover, to  
10 receive a building permit from any municipality, or political sub-  
11 division thereof, for any work requiring excavation, an individual  
12 shall provide certification of compliance with this section. Any  
13 utility that violates any provision of this section shall forfeit a  
14 penalty as determined by the department of telecommunications  
15 and energy. Penalties incurred under this section shall not be  
16 included as expenses in connection with the establishment of rates  
17 by said company.

1 SECTION 2. Section 1C of Chapter 164 of the General Laws,  
2 as appearing in the 2002 Official Edition, is hereby amended by  
3 striking said section 1C and inserting in placed thereof the  
4 following:—

5 Section 1C. Any marketing company or other competitive or  
6 unregulated operation or entity of an electric or gas company shall  
7 be in the form of an affiliate of said company and shall be sepa-  
8 rate from any generation, transmission, or distribution company  
9 affiliate of the electric or gas company. The department shall pro-  
10 mulgate standards of conduct which shall ensure the separation of  
11 such affiliates and which shall be consistent with the following  
12 provisions: (i) a distribution or gas company, or an affiliate  
13 thereof, shall not directly or indirectly use proceeds obtained from  
14 providing regulated services, or assets obtained with such pro-  
15 ceeds, to subsidize non-regulated services; said prohibition shall  
16 extend to the use of vehicles, service tools, instruments, and  
17 employees, and the costs, salaries and benefits related thereto; (ii)  
18 a distribution or gas company shall not give any affiliates any  
19 preference over non-affiliated suppliers or customers thereof in  
20 matters relating to any product or service; (iii) all products, serv-  
21 ices, discounts, rebates, and fee waivers offered by a distribution  
22 or gas company shall be available to all customers and suppliers  
23 simultaneously, to the extent technically possible, on a compa-  
24 rable basis; (iv) a distribution or gas company shall process all  
25 same or similar requests for any product, service, or information  
26 in the same manner and within the same period of time; (v) a dis-  
27 tribution or gas company shall not condition or tie the provision of  
28 any product, service, or rate agreement by the distribution or gas  
29 company to the provision of any product or service to which an  
30 affiliate is involved; (vi) a distribution or gas company shall not  
31 share with any affiliate any market information acquired or devel-  
32 oped by the distribution or gas company in the course of  
33 responding to requests for distribution or gas service or any pro-  
34 prietary customer information including, but not limited to,  
35 mailing lists, marketing information, and other customer related  
36 information, unless the use of such information is available to all  
37 commercial businesses on a non-discriminatory basis; (vii) a dis-  
38 tribution or gas company shall refrain from presenting that any  
39 advantage accrues to customers or others in the use of its services  
40 as a result of that customer or others dealing with any such affil-  
41 iate; (viii) a distribution or gas company shall not engage in joint  
42 advertising or marketing programs with any affiliate; and (ix)  
43 employees of a distribution or gas company shall not be shared

44 with, and shall be physically separated from those of, any gener-  
45 ating or marketing affiliate.

46 Upon the filing of a written complaint with the department  
47 requesting determination of compliance by a distribution or gas  
48 company, or an affiliate of a distribution or gas company, with the  
49 provisions of this section or any rule, order, or other action pro-  
50 mulgated pursuant thereto, the department shall investigate the  
51 complaint, and upon the determination that there are reasonable  
52 grounds to proceed, the department shall promptly initiate formal  
53 complaint proceedings. If the department determines that there is  
54 no reasonable basis for initiating a formal complaint proceeding,  
55 it shall so advise, in writing, the person filing such written com-  
56 plaint within 90 days. The department shall establish such penal-  
57 ties as necessary to assure compliance; provided, however, that  
58 any penalty incurred under this section shall not be included as  
59 expenses in connection with the establishment of rates by said dis-  
60 tribution or gas company. Any final judgment or determination  
61 issued by the department, as a result of an investigation or other-  
62 wise, that an electric or gas company or an affiliate thereof has  
63 violated either (1) the provisions of this section; or (2) any rule,  
64 order, or settlement promulgated pursuant thereto, shall be prima  
65 facie evidence in any civil action against the distribution or gas  
66 company or its affiliate to recover damages or obtain injunctive  
67 relief.

68 A violation of this section shall constitute an unfair or decep-  
69 tive act or practice under the provisions of chapter 93A, notwith-  
70 standing any contrary provision of any other law of the  
71 commonwealth or any exemption provided by said chapter 93A.

72 It shall be the duty of the Attorney General of the Common-  
73 wealth to institute proceedings in the Superior Court to prevent  
74 and restrain violations of this section. When the Attorney General  
75 has reason to believe an electric or gas company or its affiliate is  
76 engaging in a violation of this section, the Attorney General may  
77 bring an action to enjoin the electric or gas company, the affiliate,  
78 or both, from engaging in a violation of this section.

1 SECTION 3. Section 1E(b) of Chapter 164 of the General  
2 Laws, as so appearing, is hereby amended by striking in line 16  
3 the words “the effective date of this act” and inserting in place  
4 thereof the following:— November 1, 1997.

1 SECTION 4. Section 1E(b) of Chapter 164 of the General  
2 Laws, as so appearing, is hereby amended by striking the last sen-  
3 tence and inserting in place thereof the following:—

4 At the time of any filings made pursuant to this section, if  
5 staffing levels have decreased below those in effect on November  
6 1, 1997, the department shall hold evidentiary hearings to deter-  
7 mine if staffing levels in said company are adequate; provided fur-  
8 ther, that unless the company establishes, by clear and convincing  
9 evidence, that said staffing levels are adequate, the department  
10 shall hold that staffing levels within any function, department, or  
11 work unit, below those in existence on November 1, 1997 are  
12 unsafe and therefore not in compliance with this section. The  
13 results of the hearings shall be binding on both parties and the  
14 civil penalty for non-compliance shall be no less than \$10,000.00  
15 per day; provided, however, that the maximum civil penalty shall  
16 not exceed \$500,000 for any related series of violations. Nothing  
17 in this paragraph shall prevent reduction of forces below the  
18 November 1, 1997 level through early retirement and severances  
19 negotiated with labor organizations before said date. The pre-  
20 ceding provisions of this paragraph notwithstanding, in no event  
21 shall the department fail to establish benchmarks for employee  
22 staffing levels for each distribution, transmission and gas com-  
23 pany by September 1, 2005, regardless of whether any company  
24 has at any time used, implemented or discontinued the use of any  
25 set of performance based rates.

1 SECTION 5. Section 1F(7) of Chapter 164 of the General  
2 Laws, as so appearing, is hereby amended by adding after the  
3 phrase 1997 in line 224 the following:— and, in accordance with  
4 Section 1E, shall establish benchmark staffing levels adequate to  
5 ensure that service quality and reliability do not decline below  
6 levels that existed on November 1, 1997.

1 SECTION 6. Section 75A of Chapter 164 of the General Laws,  
2 as so appearing, is hereby amended by adding at the end thereof  
3 the following new paragraph:—

4 “Upon installation of a meter measuring gas supplied to any  
5 premises, only the authorized permanent employees of the gas  
6 company completing said installation shall be authorized to turn

7 on the gas supply; provided further, that the newly installed meter  
8 shall remain locked on the service side by the gas company until  
9 the local gas inspector inspects the installation of piping to the  
10 new gas appliance(s). Upon the successful completion of the  
11 inspection, the lock shall only be removed by an authorized per-  
12 manent employee of the gas company; provided further, that said  
13 permanent employee of the gas company shall then light all gas  
14 appliances and check all gas related equipment. Any gas company  
15 that violates any provision of this section shall forfeit a penalty as  
16 determined by the department. Penalties incurred under this  
17 section shall not be included as expenses in connection with the  
18 establishment of rates by said company.

1 SECTION 7. Section 75F of Chapter 164 of the General Laws,  
2 as so appearing, is hereby amended by striking out in lines 8  
3 through 9 the word hundred and inserting in place thereof the  
4 following new word:— thousand.

1 SECTION 8. Section 76 of Chapter 164 of the General Laws,  
2 as so appearing, is hereby amended adding at the end thereof the  
3 following:—

4 The department shall require gas companies to instruct their  
5 authorized permanent employees to annually survey their gas  
6 piping system for leak detection. Upon discovery of a natural gas  
7 leak, said leak shall be investigated, graded, logged and monitored  
8 by authorized permanent employees of the gas company and  
9 reported to the department; provided, further, that officers and  
10 employees of the department shall randomly inspect reported  
11 leaks on a regular basis. For said regular inspections the depart-  
12 ment shall collect from the gas company such reasonable fees as it  
13 may from time to time prescribe. Any gas company which violates  
14 any provision of this section shall forfeit a penalty as determined  
15 by the department. Penalties and fees incurred under this section  
16 shall not be included as expenses in connection with the establish-  
17 ment of rates by said company.

1 SECTION 9. Chapter 164 of the General Laws, as so  
2 appearing, is hereby further amended by inserting after  
3 section 105A the following new section:—

4 Section 105B. Every gas corporation or municipal gas depart-  
5 ment engaged in the distribution of gas within the commonwealth  
6 shall annually conduct a survey of all schools, student quarters,  
7 day care centers, kindergartens, pre-schools, churches, hospitals,  
8 elder centers, nursing homes, rehabilitation centers, libraries, fire  
9 stations, police stations, theatres, arenas, and all public buildings  
10 within their service territories by authorized permanent employees  
11 of the gas company. Said survey shall include tests for gas leakage  
12 and the visual inspection of all accessible gas facilities and gas  
13 appliances in the structure. Any gas company which violates any  
14 provision of this section shall forfeit a penalty as determined by  
15 the department. Penalties incurred under this section shall not be  
16 included as expenses in connection with the establishment of rates  
17 by said company.

1 SECTION 10. Section 115A of Chapter 164 of the General  
2 Laws, as so appearing, is hereby amended by striking in line 9 the  
3 word “five” and inserting thereof the following new word:— fifty.

1 SECTION 11. Section 124I of Chapter 164 of the General  
2 Laws, as so appearing, is hereby amended by striking out said  
3 section 124I in its entirety and inserting in place thereof the  
4 following new section:—

5 124I. Each gas company shall upon the termination of service  
6 by a customer shut off said service within thirty days after  
7 receiving notice of the termination of service by said customer.  
8 Said company shall use only authorized permanent employees in  
9 complying with this section.

1 SECTION 12. Chapter 164 of the General Laws, as so  
2 appearing, is hereby further amended by inserting after  
3 section 124I the following new section:—

4 124J. Any company found by the department to have willfully  
5 violated sections one hundred and twenty-four A to one hundred  
6 and twenty-four I, inclusive, shall be assessed a penalty after a  
7 hearing by the department, in an amount not to exceed one thou-  
8 sand dollars. Penalties and fees incurred under said sections 124A  
9 through 124I shall not be included as expenses in connection with  
10 the establishment of rates by said company.

11 SECTION 13. Section 29 of chapter 65 of the Acts of 2004, is  
12 hereby amended by striking the in the first sentence the word  
13 “except” and inserting in place thereof the following:— including.

1 SECTION 14. Section 29 of chapter 65 of the Acts of 2004, is  
2 hereby amended by striking the in the third sentence the word  
3 “except” and inserting in place thereof the following:— or.

1 SECTION 15. Chapter 501 of the Acts of 2002 is hereby  
2 amended by adding after the first sentence the following:—  
3 Any company found by the department to have willfully vio-  
4 lated this section shall be assessed a penalty in an amount not to  
5 exceed five hundred dollars for each violation. Penalties and fees  
6 incurred under this section shall not be included as expenses in  
7 connection with the establishment of rates by said company.